No. 88-302

Supreme Court, U.S.
FILED
SEP 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

JAMES A. GORDON, SPECIAL DEPUTY, STATE INSURANCE COMMISSIONER OF MARYLAND AND RECEIVER, EASTERN INDEMNITY COMPANY OF MARYLAND IN RECEIVERSHIP,
Petitioner,

vs.

UNITED STATES DEPARTMENT OF THE TREASURY, W.E. DOUGLAS, COMMISSIONER, UNITED STATES DEPARTMENT OF THE TREASURY, FISCAL SERVICE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

KEVIN T. CRONIN
Counsel of Record
National Association of Insurance Commissioners
444 N. Capitol Street, N.W., Suite 316
Washington, D.C. 20001
(202) 624-7790
Attorney for Amicus Curiae

CAROLE J. OLSON
Associate Counsel
National Association of Insurance Commissioners
120 West 12th Street
Kansas City, Missouri 64105
(816) 842-3600
Of Counsel

E. L. MENDENHALL, INC., 913 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

Table of Authorities II

Interest of the Amicus Curiae 1

Argument

I. The Fourth Circuit's decision creates a significant nationwide impact on all state insurance commissioners in the administration or supervision of insolvent insurance companies 4

II. The Fourth Circuit Court erred in concluding that state regulatory schemes governing liquidation of insolvent insurance companies do not constitute regulation of the business of insurance under the McCarran-Ferguson Act 7

III. The Fourth Circuit's decision conflicts with other decisions on the scope of the state commissioners' authority to liquidate insolvent insurance companies 11

Summary of Argument 12

Conclusion 13

TABLE OF AUTHORITIES

Cases

Gordon v. United States Treasury, 846 F.2d 272 (4th Cir. 1988) 4

Group Life and Health Ins. Co. v. Royal Drug Co., Inc., 440 U.S. 205, 213 (1979) 9

Idaho v. Internal Revenue Service, 662 F.Supp. 60 (D. Idaho 1987), *rev'd* No. 87-4057 (9th Cir. filed Sept. 7, 1988) 11

Union Labor Life Ins. Co. v. Pireno, 458 U.S. 119 (1982) 8, 9, 11

Universal Marine Ins. Co. v. Beacon Ins. Co., 768 F.2d 84, 88 (4th Cir. 1985) 11

Washburn v. Corcoran, 643 F.Supp. 554 (S.D.N.Y. 1986) 11

Statutes

15 U.S.C. § 1011 *et seq.* 2, 8

31 U.S.C. § 3713 ..... 2, 5, 7, 12

Md. Code Ann. Art. 48A § 132 *et seq.* 4

Md. Code Ann. Art. 48A §§ 132, 134, 135 10

Other Authorities

I *NAIC Proceedings* 30-32 (1936) 6

I *NAIC Proceedings* 238-290 (1978) 6

I *NAIC Proceedings* p. iii (1988) 2

II *NAIC Model Laws, Regulations and Guidelines* No. 555 (1988) 4

No. 88-302

In the Supreme Court of the United States

OCTOBER TERM, 1988

JAMES A. GORDON, SPECIAL DEPUTY, STATE INSURANCE COMMISSIONER OF MARYLAND AND RECEIVER, EASTERN INDEMNITY COMPANY OF MARYLAND IN RECEIVERSHIP,
Petitioner,

vs.

UNITED STATES DEPARTMENT OF THE TREASURY, W.E. DOUGLAS, COMMISSIONER, UNITED STATES DEPARTMENT OF THE TREASURY, FISCAL SERVICE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTEREST OF THE AMICUS CURIAE

The National Association of Insurance Commissioners ("NAIC") is a nonprofit, unincorporated association whose membership consists of the 50 states, the District of Columbia, the territories and insular possessions of the United States. The NAIC was organized in 1871 to assure the protection of policyholders across the country. As stated in the NAIC's Constitution, the protection of policyholders continues to be the principal objective of the NAIC:

Article II. OBJECTIVE

The objective of this body is to serve the public by assisting the several State insurance supervisory officials, individually and collectively, in achieving the following fundamental insurance regulatory objectives:

(1) Maintenance and improvement of State regulation of insurance in a responsive and efficient manner;

(2) Reliability of the insurance institution as to financial solidity and guaranty against loss;

(3) Fair, just and equitable treatment of policyholders and claimants.

I *NAIC Proceedings* p. iii (1988).

The principal function of the NAIC is to serve the public by assisting these insurance commissioners in overseeing the activities of the insurance industry, which activities include the supervision of rehabilitation and liquidation proceedings.

Each commissioner is obligated by law to protect policyholders and in doing so, must carry out all applicable statutory procedures. At issue in this case is whether the Maryland statutory procedures setting forth a priority system for claims payment constitute statutes enacted for the purpose of regulating the "business of insurance" under the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*,[1] and if so, whether this precludes application of the "super" priority set forth in 31 U.S.C. § 3713[2] to the claims in this liquidation.

---

1. Appendix A.
2. Appendix B.

The Maryland statutes are derived from a model law developed by the NAIC, the Insurers Supervision, Rehabilitation and Liquidation Model Act, which has been adopted in some manner by every state. This model law places the claims of policyholders above those of the state or federal government. All states which have adopted this approach are significantly affected by the decision of the Fourth Circuit Court of Appeals, which held that claims of the federal government must be placed ahead of policyholder claims. The individual state commissioners, the members of the NAIC, possess a vital interest in the outcome of this matter because the opinion of the Circuit Court diminishes the scope of state regulation of the business of insurance. This impairs the ability of the commissioners to fulfill the responsibility vested in them by law to wind up the affairs of insolvent insurance companies, which responsibility includes the paying of policyholder claims.

In submitting this brief, the NAIC seeks to demonstrate its interests in this proceeding, which are:

1. To preserve the orderly disbursement of assets of insolvent insurers,
2. To encourage cooperation and uniformity among states in the liquidation of insolvent insurers, and
3. To assist the state insurance commissioners in protecting the interests of policyholders across the country.

This brief is therefore submitted, with consent of the parties, in support of the petition of the receiver of Eastern Indemnity Company of Maryland.

ARGUMENT

I. The Fourth Circuit's decision creates a significant nationwide impact on all state insurance commissioners in the administration or supervision of insolvent insurance companies.

A. The priority scheme for payment of claims which was developed by the NAIC has been widely adopted by the states and exists to protect policyholders.

In urging this Court to grant the receiver's petition, the NAIC seeks to maintain the orderly and uniform distribution of the assets of insolvent insurers. The distribution process will be severely hampered if the Fourth Circuit's decision[3] stands because it will destroy the distribution approach taken by the majority of states.

Maryland's statutory scheme governing liquidation proceedings[4] is patterned after the NAIC model concerning the liquidation of insurers.[5] The majority of states have endorsed the priority scheme set forth therein which places policyholder claims before those of the federal government.[6] This is significant because it reflects how fundamental the protection of policyholders is.

---

3. *Gordon v. United States Treasury*, 846 F.2d 272 (4th Cir. 1988).

4. Md. Code Ann. Art. 48A, § 132 *et seq.*

5. The Insurers Supervision, Rehabilitation and Liquidation Model Act, Model No. 555, II *NAIC Model Laws, Regulations and Guidelines* (1988).

6. *See* Appendix C for the text of the priority scheme and Appendix D for a list of those states which have adopted this concept.

If the Fourth Circuit Court's decision is allowed to stand, it will directly impair the states' ability to pay policyholder claims. This impairment will extend nationwide, thereby depriving policyholders across the country of the protection afforded to them by the state priority of distribution laws.

The effect of the Fourth Circuit's opinion also extends to the personal liability of the commissioners as receivers or liquidators of insolvent companies because subsection (b) of 31 U.S.C. § 3713 subjects them to liability if they pay any debts before those of the federal government. The state insurance commissioners generally are obligated by law to appoint a receiver or liquidator to handle the affairs of an insolvent insurance company. However, the commissioners' responsibility does not conclude once a receiver or liquidator is appointed. The commissioner always maintains a degree of supervisory responsibility over the activities of the receiver or liquidator. Therefore, whether directly, or indirectly through appointment of a liquidator, the commissioner is ultimately the overseer of the company's affairs. The orderly administration of insolvent company affairs has already been thwarted in a number of instances because of the dilemma facing state commissioners as liquidators of the companies. The dilemma which the commissioners face is whether to release assets of the company to pay claims of the federal government (in contravention of the state priority scheme and in disregard for the interests of policyholders) or to refuse to release the funds and face personal liability for failure to do so. Either of these alternatives is highly undesirable because the interests of the policyholders are ultimately affected. The policyholders face a delay in claims payment, and possibly no payment at all, as a result of the federal claim for priority.

B. The Fourth Circuit failed to take the philosophy of protecting policyholders into consideration when it rendered its decision.

Placing policyholder claims among those paid first coincides with the fundamental philosophy underlying state insurance regulation. That fundamental tenet is to protect the interests of policyholders. Protecting the interests of policyholders has historically been linked to the monitoring of company solvency. As the NAIC's constitution provides, "[t]he objective of this body is to serve the public by assisting the several State insurance supervisory officials . . . in achieving . . . (2) reliability of the insurance institution as to *financial solidity and guaranty against loss;* . . ." (Emphasis added.) The ability of a company to guaranty against loss depends on its financial solidity. That "guaranty against loss" is a protection purchased by a policyholder and it is something which the policyholder is entitled to expect, regardless of the company's financial position.

In the event that a company becomes insolvent and is unable to fulfill its obligations to policyholders, the state steps in and attempts to fulfill those obligations to the extent possible under the law. The "laws" on liquidation originated decades ago. One of the bases for state laws on liquidation is the NAIC's model on liquidation of insurers.[7] This development of model legislation is one of the methods to encourage cooperation and uniformity among the states in the liquidation process, and it is intended to result in protection of policyholder interests. The Fourth Circuit Court failed to take this fundamental philosophy

---

7. I *NAIC Proceedings* 30-32 (1936). The model was revised extensively in 1978 and continues to be updated. I *NAIC Proceedings* 238-290 (1978).

of protecting policyholders into consideration when it determined that the state's liquidation process is not the "business of insurance."

C. The Fourth Circuit's decision will affect a number of pending liquidation proceedings.

The issue presented in the receiver's petition is one of widespread significance. It merits review by this Court because of the number of pending insurance company liquidations in which the question is or may become an issue. There are over 30 liquidations currently in process in which the federal priority question has already been or is likely to be raised. In these liquidations alone, it is estimated that over $30,000,000 worth of federal claims may be asserted pursuant to 31 U.S.C. § 3713. In several instances the assets of the insolvent company are insufficient to pay both the claims of the federal government and have anything remaining for policyholders and other insureds. In addition, the commissioners in all states are gravely impeded in their ability to proceed with an orderly distribution of assets until this matter is finally resolved. The ambiguity created by the Fourth Circuit's decision needs to be settled in order for these pending liquidation proceedings to move forward.

II. The Fourth Circuit Court erred in concluding that state regulatory schemes governing liquidation of insolvent insurance companies do not constitute regulation of the business of insurance under the McCarran-Ferguson Act.

The NAIC urges this Court to review the conclusions drawn by the Fourth Circuit that state regulatory schemes governing the liquidation of insolvent insurance

companies do not constitute the business of insurance under the McCarran-Ferguson Act. Whether the members of the NAIC, the insurance commissioners, continue to carry out this obligation of liquidating companies is dependent on resolution of this issue. The states have long followed the mandates of the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*, that the regulation of the business of insurance is vested in the states. A ruling that restricts the scope of state regulation of the business of insurance will have a detrimental effect on the insurance commissioners' authority to administer the affairs of insolvent companies across the country. The Fourth Circuit's ruling is not limited to the narrow issue of affording priority to the federal government. If the Fourth Circuit Court's opinion stands, insurance commissioners will not only be forced to relegate payment of policyholder claims to those of the federal government, but their overall authority to administer the insolvency of an insurance company is placed into question because of the ruling that these activities do not constitute the business of insurance under the McCarran-Ferguson Act.

The NAIC requests that this Court re-examine whether the process of liquidating insolvent insurance companies satisfies the test set forth in *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982). If the Court should agree with the Fourth Circuit that the *Pireno* three-part test is the appropriate tool for resolving the issue, the NAIC is confident that the criteria to determine whether an activity constitutes the business of insurance will have been satisfied. Under *Pireno*, three factors are relevant: (1) whether the activity involves the transfer or spreading of risk, (2) whether it involves the relationship between an insurer and insured, and

(3) whether the activity is confined to entities within the insurance industry. Concluding that the first factor may not be an indispensable requirement in all cases, the Fourth Circuit Court adopted the district court's analysis that the liquidation of insolvent insurers constitutes regulation of the business of "insurers" rather than the business of "insurance." The NAIC respectfully urges this Court to carefully examine the Fourth Circuit's analysis of whether the three-part *Pireno* test is satisfied in light of the following.

1. Transfer or spreading of risk.

The Fourth Circuit's failure to extend the "business of insurance" to the liquidation process limits the "spreading of risk" to the period preceding, but not including, insolvency. It is the policyholder's risk or exposure which is at issue here—not the risk of insolvency as the Fourth Circuit concluded. The risk to the policyholder does not automatically cease to exist when a company becomes insolvent. The liquidation of the company inextricably involves the payment of claims which this Court itself has recognized as the business of insurance.[8] Limiting the "spreading of risk" to the period preceding insolvency does not coincide with the principal goal of state insurance regulation, which is the protection of policyholders. Undue hardship should therefore not be inflicted on the policyholders of an insolvent insurance company. The policyholder should not be burdened with the responsibility of ascertaining the financial condition of the company prior to the placing of his or her business with that company.

---

8. *Group Life and Health Ins. Co. v. Royal Drug Co., Inc.*, 440 U.S. 205, 213 (1979).

A state insurance commissioner undertakes an obligation of administering the affairs of a company if necessary, which may include supervision, rehabilitation or liquidation of the company's affairs. This duty exists from the moment a company receives authorization to conduct business in any given state and extends through the moment the business is finally resolved. This duty is explicitly set forth in state statutes governing the liquidation of insolvent companies.[9] The fact that the states have anticipated that a company may become insolvent and have provided for uninterrupted regulation if insolvency occurs demonstrates that this activity constitutes the business of insurance.

2. Relationship between the insurer and insured.

The Fourth Circuit's opinion fails to address the significance of the state's recognition that the insurer/policyholder relationship continues to exist until the affairs of the company are resolved. The relationship between the insurer and insured/policyholder is specifically addressed in the NAIC model law governing liquidations and is addressed in every state statute governing this process. The fact that the states have anticipated and have prepared for the distribution of money to pay policyholder claims (by statute) demonstrates that the relationship between the insurer and policyholder continues to exist. The statutes were designed to insure that this insurer/policyholder relationship would be disrupted as little as possible in the event of insolvency.

---

9. *See e.g.* Md. Code Ann. Art. 48A §§ 132, 134, 135.

3. Activity is confined to entities within the insurance industry.

The NAIC asserts that the Fourth Circuit failed to fully analyze whether liquidation proceedings are confined to the insurance industry. Insurance company insolvencies are not governed by bankruptcy law, but by state insurance statutes governing liquidations. *Universal Marine Ins. Co. v. Beacon Ins. Co.*, 768 F.2d 84, 88 (4th Cir. 1985). These state statutes are only designed to cover insurance company insolvency, and the authority vested therein is limited to the matters involving members of the insurance industry. A review of this third aspect of the *Pireno* test would reveal that this criteria is satisfied as well.

An examination by this Court of these three *Pireno* factors is imperative because it would reveal that the activities at issue in this case do indeed constitute the business of insurance.

III. The Fourth Circuit's decision conflicts with other decisions on the scope of the state commissioners' authority to liquidate insolvent insurance companies.

The Fourth Circuit's opinion is in direct conflict with that issued by a federal district court in *Washburn v. Corcoran*, 643 F.Supp. 554 (S.D.N.Y. 1986), in which the court held that liquidation proceedings constitute the business of insurance. In addition, the Ninth Circuit recently issued a decision in *Idaho v. Internal Revenue Service*, 662 F.Supp. 60 (D. Idaho 1987), *rev'd* No. 87-4057 (9th Cir. filed Sept. 7, 1988), which conflicts with the Fourth Circuit's conclusion that statutes governing liquidation proceedings do not constitute the business of insur-

ance. Although the Ninth Circuit narrowly limited its decision to the issue of whether the state priority scheme should be superseded by the federal statute, 31 U.S.C. § 3713, the court emphasized that the remainder of the Idaho state liquidation statutes are still operative. Under this decision, states are clearly responsible for liquidating insolvent insurance companies. This responsibility is not, however, clear as a result of the Fourth Circuit's opinion which ruled that the Maryland liquidation statutes do not constitute the business of insurance. It is imperative that this uncertainty about the states' overall authority to supervise liquidations be resolved.

SUMMARY OF ARGUMENT

The NAIC vigorously supports the receiver's petition to this Court requesting a clarification of the law concerning the application of the McCarran-Ferguson Act to state liquidation proceedings. Resolution of this issue is urgent in light of conflicting opinions between the Fourth Circuit and the Ninth Circuit. The impact of the Fourth Circuit's opinion on pending liquidations and on state insurance commissioners nationwide requires a review of that decision.

CONCLUSION

The NAIC respectfully requests that this Court grant the receiver's petition for a writ of certiorari.

KEVIN T. CRONIN
Counsel of Record
National Association of Insurance Commissioners
444 N. Capitol Street, N.W., Suite 316
Washington, D.C. 20001
(202) 624-7790
Attorney for Amicus Curiae

September, 1988

APPENDIX

APPENDIX A

McCarran-Ferguson Act

Chapter 20. REGULATION OF INSURANCE

§ 1011. Declaration of policy

Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

§ 1012. Regulation by State law; Federal Law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* that after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

§ 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Antitrust Act applicable to agreements to, or acts of, boycott, coercion, or intimidation

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

§ 1014. Applicability of National Labor Relations Act and Fair Labor Standards Act of 1938

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

§ 1015. Definition of "State"

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

APPENDIX B

31 U.S.C. § 3713

§ 3713. Priority of Government claims

(a)(1) A claim of the United States Government shall be paid first when—

(A) A person indebted to the Government is insolvent and—

(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

(ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(2) This subsection does not apply to a case under title 11.

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

APPENDIX C

NAIC Insurers Supervision, Rehabilitation and Liquidation Model Act

Section 42. Priority of Distribution

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

A. Class 1. The costs and expenses of administration, including but not limited to the following:

(1) the actual and necessary costs of preserving or recovering the assets of the insurer;

(2) compensation for all services rendered in the liquidation;

(3) any necessary filing fees;

(4) the fees and mileage payable to witnesses;

(5) reasonable attorney's fees;

(6) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

B. Class 2. Debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within one year before the filing of the

petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

C. Class 3. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity.

D. Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

E. Class 5. Claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or for-

feiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under Subsection H.

F. Class 6. Claims filed late or any other claims other than claims under Subsection G and H.

G. Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

H. Class 8. The claims of shareholders or other owners.

APPENDIX D

The following states have adopted the principle of paying policyholder claims before those of the federal government:

Alaska Stat. §§ 21.78.180 and 21.78.260 (1978); Ariz. Rev. Stat. Ann. §§ 20-629 (1982) and 20-637 (1984); Ark. Stat. Ann. § 23-68-126 (1988); Conn. Gen. Stat. § 38-462 (1980); Fla. Stat. § 631.271 (1987); Ga. Code Ann. § 33-37-20 (1986); Idaho Code § 41-3342 (1981); Ind. Code § 27-9-3-40 (1979); Iowa Code § 507C.42 (1988); Kan. Stat. Ann. § 40-3601 (1986); Ky. Rev. Stat. § 304.33-430 (1982); La. Rev. Stat. Ann. § 22:746 (1987); Maine Rev. Stat. Ann. tit. 24-A § 4379 (1980); Md. Code Ann. Art. 48A § 158A (1987); Mich. Comp. Laws § 500.7834 (1984); Minn. Stat. § 60B.44 (1987); Mont. Code Ann. § 33-2-1371 (1979); Neb. Rev. Stat. § 44-127.25 (1984); Nev. Rev. Stat. § 696B.420 (1980); N.H. Rev. Stat. Ann. § 402-C:44 (1987); N.M. Stat. Ann. § 59A-41-44 (1984); N.Y. Ins. Law § 7435 (1985); N.C. Gen. Stat. § 58-155.15 (1987); Ohio Rev. Code Ann. § 3903.42 (1983); Okla. Stat. tit. 36 § 1927 (1983); Pa. Cons. Stat. § 40-11-426 (1982); R.I. Gen. Laws § 27-14-22 (1987); S.C. Code Ann. § 38-27-610 (1988); Tenn. Code Ann. § 56-9-127 (1981); Tex. Ins. Code Ann. § 21.28-B (1984); Utah Code Ann. § 31A-27-335 (1986); V.I. Code Ann. tit. 22 § 1277 (1985); W. Va. Code § 33-10-19a (1985); Wis. Stat. § 645.68 (1980); and Wyo. Stat. § 26-28-125 (1983).